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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

Nos. 715 and 716.

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT, Appellant.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Appellee.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE 7TH CIRCUIT.

BRIEF OF JAMES M. WRIGHT, APPELLANT.

WALTER L. CLEMENTS,
South Bend, Indiana.

ELMER McCLAIN,
Lima, Ohio.

LUTHER B. BRATTON,
Kankakee, Illinois.

RAY M. FOREMAN,
Danville, Illinois.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937-8.

No. 715-716.

IN THE MATTER OF JAMES M. WRIGHT,
Debtor.

JAMES M. WRIGHT, Appellant.

vs.

UNION CENTRAL LIFE INSURANCE CO.,
Appellee.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF JAMES M. WRIGHT, APPELLANT.

I. OPINIONS BELOW.

The opinion of the District Court for the Northern District of Indiana, Fort Wayne Division, was not reported.

The opinion of the United States Circuit Court of Appeals for the Seventh Circuit is reported in 91 Fed. (2d) 894. (Opinion set out in full in R. 67-74).

II. JURISDICTION.

Certiorari was granted by this Court February 28, 1938, under Rule 38 (5) (b), providing for writ in case of conflict in decisions, etc. Revised Rules Supreme Court, June 5, 1928. (Rule 38 (5) (b)). Sec. 240 (a) Judicial Code (Mason's) as amended February 13, 1925.

III. STATEMENT OF THE CASE.

(1). The petitioner was an insolvent farmer residing in Jay County, Indiana, within the jurisdiction of said District Court and filed his petition and included in his schedules his 280 acres of real estate therein for the benefits of the provisions of Section 75 of the Federal Bankruptcy Act on October 29, 1934 (R. 2-8).

He amended his petition under subsection (s) enacted August 28, 1935, on October 11, 1935. (R. 2-9).

(2). On the petition of the Appellee the Referee struck Appellant's land from the schedules (R. 37). The petition of the Appellant to review this action was denied by the District Court (R. 42) (Opinion R. 67).

The District Court also denied Appellant's petition to amend his schedules (R. 8). (Opinion R. 67).

(3). From these orders of the District Court the petitioner prayed an appeal to the Circuit Court of Appeals for the Seventh Circuit with assignment of errors. (Rec. 42) (R. 11).

The Appeals were granted by the District Court and perfected. (R. 44) (R. 13-14) (Opinion R. 67).

(4). The Circuit Court of Appeals stated that the questions in both appeals were practically the same and consolidated them. (R. 67) (R. 69).

(5). After several pages of discussion about the title (which we showed in the reply brief on the petition for the writ was waived by the Respondent in failing to object to the parties to the petition until 16 months after it was filed, or raise any question as to the petitioner's title)—the Court in its opinion finally reached the conclusion that on August 28, 1935, the debtor had an interest in the land—i.e. the right to redeem from the sheriff's sale; that said right ended July 20, 1936 (one year from the date of the sale)—unless said amended subsection (s) of August 28, 1935, operated to extend his right of redemption (to August 28, 1938, (R. 70).

(6). The Court states in substance that Appellant contends that said amendment (subsection (s)) operated not only to extend the time for redemption of the 200 acre tract but also to void the deed for the 80.31 acre tract and to extend the time of redemption as to it.

(7). The original petition and schedules in bankruptcy were filed October 29, 1934. The 200 acre tract was not sold until nine months afterwards—(July 20, 1935) (Rec. 8-9) (Opinion R. 70).

The 80.31 tract was sold July 12, 1934, before the petition was filed or during the year of redemption. (Opinion R. 70).

(8). The Circuit Court then proceeded to decide the question of whether subsection (s) of August 28,

1935, extended the period of redemption as to both tracts. It did not apply or follow the decision of this Court in (Va.) Wright vs. Mountain Trust Bank (March 29, 1937) 81 L. Ed. 736, 300 U. S. 440 but followed the erroneous doctrine of Lafayette Life Insurance Co. vs. Lowmon, 79 F. (2d) 887, and held that Congress had no power to extend the period of redemption under the State law and that said Subsection (s) was void as to both tracts and affirmed the decisions of the District Court (Opinion R. 70-71-72 and 73). The Circuit Court denied Appellant's petition for a rehearing on September 20, 1937 (R. 76).

(9). It will be noted that the Circuit Court took no notice that as to the 200 acre tract, the petition in bankruptcy was filed over nine months prior to the sale of said tract and failed to follow the decision of this Court that Congress had the power to extend the period of redemption until August 28, 1935.

QUESTIONS PRESENTED.

(10). Two questions are thus presented:

(a). Did Congress have the power to extend the period of redemption or stay as to the 200 acre tract and did said subsection (s) apply to said tract in which the petition in bankruptcy was filed before the period of redemption commenced to run and should said Circuit Court have followed the decision of this Court in the Wright case and reversed said decisions of the District Court?

(b). Said Circuit Court instead of applying the erroneous doctrine of Lafayette vs. Lowmon, 79 F. (2d) 887 should have followed and applied the

doctrine of this Court in (Va.) Wright vs. Mountain Trust Bank, 81 L. Ed. 736 to the 80.31 acre tract and even though the petition in bankruptcy was filed after the period of redemption commenced to run and should have held that subsection (s) applied and extended the period of redemption or stay, the same as to the 200 acre tract—and should have reversed the decision of said District Court. (The present proceedings of Congress clearly show the policy of that body on this question. It is now considering it and will likely extend said moratorium or stay until March 4, 1940).

IV. SPECIFICATION OF ERRORS.

Among the assignment of errors were:

(4). "That said (District) Court erred in holding that the debtor was not entitled to the benefits of the provisions of amended subsection (s) of section 75 of the Bankruptcy Act of August 28, 1935). (R. 12).

(5). "That the Court erred in depriving the debtor of the benefits and relief granted in said amended subsection (s) of August 28, 1935). (R. 12).

V. ARGUMENT ON THE MERITS.

(1). Summary of argument as to the 200 acre tract.

Point (a). The petition as to the 200 acre tract having been filed nine months prior to the sale, the facts here are the same as in the recent case of Wright vs. Mountain Trust Bank. 81 L. Ed. 736, 300 U. S. 440.

Point (b). This Court in the (Va.) Wright case has squarely held that subsection (s), enacted

August 28, 1935, is constitutional and hence that it applies in this case as to the 200 acre tract.

Point (c). The rights of the debtor under Section 75 and its amendments vested at the time of the filing the petition—October 29, 1934. No alleged rights under the State law could have been acquired after that date which would deprive him of the benefits of the Act.

Point (d). This Court held in the Wright case that the order of reference in the petition in bankruptcy initiated the proceedings and gave the debtor the right to the stay of three years and the other benefits of Section 75 and its amendments.

Point (e). The adverse decision of this Court in the Radford case did not change the situation. Subsection (s) was applied to all cases, like this, pending in the Federal Court and continued and kept them alive. Hence, the District Court had exclusive jurisdiction over the land at and after the enactment of the new subsection (s) on August 28, 1935.

Point (f). When the petition herein was filed there had been no sale of the 200 acre tract. No period of redemption had commenced to run and no deed had been delivered.

Point (g). The petition in the Lowmon case was filed after the year had commenced to run. The Circuit Court committed error in following it in its ruling as to the 200 acre tract. It should have followed the decision of this Court in the (Va.) Wright Case and rejected all others.

Point (h). The doctrine in the Lowmon case was rejected by this Court and overruled in the decision in the (Va.) Wright case. This Court could not have

removed the conflict in the decisions without overruling it.

Point (i). Paragraph (2) of subsection (s) expressly stayed all judicial and official proceedings in the State Courts against the debtor for the period of three years from August 28, 1935. That only affected the remedy.

Point (j). The Circuit Court had no power to put limitations on the opinion in the (Va.) Wright case which were not placed thereon by this Court.

Point (k). The decision of this Court in the (Va.) Wright case was supreme and any alleged rights asserted under State laws had to give way.

Point (l). The Circuit Court erred in not reversing the decision of the District Court.

(2). Summary as to 80.31 acre tract.

Point (a). The Supreme Court in the (Va.) Wright case intended to hold subsection (s) was constitutional in all cases whether the petition was filed before or after the sale of the real estate. If it had intended to limit it to cases filed before the sale of the land, it would have said so.

Point (b). Under the law of Indiana, the mortgagor remains the owner of the land until the end of the year.

Point (c). The year of redemption is not bid on or sold at the sheriff's sale of the land.

Point (d). The Bankruptcy Act is remedial and should have been liberally construed to carry out the purposes of Congress.

Point (e). The right to redeem from a sheriff's sale is designated as the equity of redemption and is property of the debtor.

Point (f). It is the absolute property of the debtor and public policy forbids him from waiving it and it can not be taken for a deficiency judgment or taxes.

Point (g). Congress intended by Section 75 and its amendment, subsection (s), that the owner of the equity of redemption had the right to file a petition under this Act at any time before the expiration of the year of redemption and it extended the period of redemption or stay for three years from August 28, 1935, the same as though the petition in Bankruptcy had preceded the sale of the land.

Point (h). Congress nor the Supreme Court never intended to apply subsection (s) only to cases filed before the sale and to not apply it to cases filed during the year of redemption.

Point (i). Congress intended to give the owner of the equity of redemption a stay of three years and the right to remain on his land and rehabilitate himself and refinance his loan, the same as though he had filed before the sale.

Point (j). This Court in the (Va.) Wright Case could not have removed the conflict in the decisions except by overruling the Lowmon case. It was the cause of the conflict and the conflict could not be removed without removing the cause.

Point (k). Congress had as much power to extend the stay three years where the petition was filed during the year of redemption as where it was filed before the sale of the land.

Point (l). The Circuit Court based its decision in the Lowmon case and the case at Bar on the theory that the mortgagee had acquired some

alleged right under the Indiana law which could not be taken away by the Act of Congress of August 28, 1935. The powers of Congress cannot be restricted or controlled by the laws of a State.

Point (m). The exclusive power to enact laws on the subject of Bankruptcies has been delegated to Congress by the Federal Constitution. It was denied to the States. Hence its Acts on that subject are the supreme law of the land and the laws of the States on that subject must yield and give way.

Point (n). Congress is the judge of the means it will employ in executing its constitutional powers in relieving distressed insolvent farmers.

Point (o). The Circuit Court erred in following its own decision in the Lowmon case and in not following the decision of this Court in the (Va.) Wright case and in not reversing the decision of the District Court.

Point (p). The dignity of the law rests on its harmony and uniformity. Conflict brings reproach.

Point (q). The conflict in the decisions on the questions presented here must be removed and calls for "the exercise of this Court's power of supervision."

(3). Argument of points as to the 200 acre tract.

Point (a). This point states that the petition herein was filed nine months prior to the sale of the 200 acre tract and that it is exactly like the facts in the (Va.) Wright case. We have cited the pages of the record on this fact in the above statement of the case and assume it need not be repeated here.

Wright vs. Mountain Trust Bank 81 L. Ed. 736, 300 U. S. 440.

It is plain that the decision in that case holding that Congress had the power to extend the stay for three years, controls in the case at Bar as to said 200 acre tract and that the Circuit Court should have so held.

Point (b). Is in substance that this Court in the (Va.) Wright case decided the question in the case at Bar as to said 200 acre tract.

That decision marks a new epoch in the history of bankruptcy legislation in many respects.

We will notice but one at present: The Court holds that the new Act of Congress goes upon the theory that the farmer shall retain his Home, and be given time to reorganize and refinance himself rather than to sell it.

It said: "The farmer's proceedings in bankruptcy for rehabilitation resembles that of a corporation for reorganization. As to the latter it is expressly provided that the debtor may, to some extent, be left in the possession 11 U.S.C.A. Sec. 207 (e); and it is common practice to appoint as receivers one of the officials of the corporation."

Wright vs. Mountain Trust Bank 81 L. Ed. 736 (746) 300 U. S. 440.

It provides a plan for the reorganization of the farmer.

Again: "The mortgagee is in default but it is not therefore assumed that he is a wrongdoer or incompetent to conduct farming operations. The legislation (subsection (s) August 28, 1935) is designed to aid victims of the general economic depression."

Then the Court states in substance that he is vitally interested in retaining the ownership of his

land and the interests of all will be better served by leaving him retain possession of it under the supervision of the District Court than to appoint a receiver.

Wright case 81 L. Ed. 736 (745-6).

When the Circuit Court of Appeals stated in its opinion as set out above that the debtor had an interest in the land i.e.—the right to redeem the dispute was ended, because this Court in the Wright case squarely held that subsection (s) was valid and extended the stay for three years.

Again: The Court quoted paragraph (3) providing for the stay thus:

"When the conditions set forth in this section (Sec. 75) have been complied with, the Court shall stay all judicial or official proceedings in any Court or under the direction of any official, against the debtor or any of his property, for the period of three years."

11 U.S.C.A. Sec. 203 (s). Par. (2).

After quoting paragraph (3) this Court held the Act constitutional and cited Crowell vs. Benson, 285 U.S. 22, 76 L. Ed. 598 in support of its conclusion.

The Court took up every other provision of subsection (s) and held all of them constitutional.

Point (c). This point is in substance that the rights of the Appellant under section 75 and subsection (s) vested with the filing of his petition on October 29, 1934.

Point (d). This Court has also settled both of these points in the following language in said Wright case:

"The entry of the order of reference initiated pro-

ceedings designed to move, through the appointment of appraisers, the appraisal, and the Referee's order recognizing the debtor's right to possession to the grant of the stay by the Court. Under the Act no further affirmative action by the petitioner precedent to his obtaining the stay was necessary."

Wright vs. Mountain Trust Bank 61 L. Ed. 736 (746).

Point (e). Is to the effect that the adverse decision in the Radford case does not change the situation. Paragraph (5) of subsection (s) provides:

"This title shall be held to apply to all existing cases now pending in any Federal Court under this title (the case at Bar was pending) . . . . and all cases that have been dismissed by . . . . commissioner or Referee or Court because of the Supreme Court decision holding the former subsection (s) unconstitutional shall be promptly reinstated, etc."

11 U.S.C.A. Sec. 203. Subsection (s) (5).

This paragraph brought the case at Bar forward to August 28, 1935, and from that date he was entitled to the three years stay and the right to retain the land for that period under the supervision of the Court and during that period he should retain the possession of his land on the payment of a reasonable rental.

11 U.S.C.A. Sec. 203. Subsection (s). Par. (2).

(Va.) Wright case, 81 L. Ed. 736 (742).

Point (f). When the petition herein was filed there had been no period of redemption and stay had commenced to run and no deed had been delivered.

The filing of the petition under subsection (n) of Section 75 immediately subjected the farmer and all of the land herein to the exclusive jurisdiction of the (District) Court.

11 U.S.C.A. Sec. 203 (n).

No alleged rights could have been acquired in the state courts and the mortgagee could not have bettered his condition therein as against the debtor, after the filing of said petition and schedules and the vesting of said land in the jurisdiction and control of said Bankruptcy Court. Its rights would have to be measured by the Federal Bankruptcy Acts.

Congress in the amendment of subsection (n) of Section 75 on August 28, 1935, adopts the "equity of redemption" and "the period of redemption" and subsection (s) adopts it as prescribed by State laws.

11 U.S.C.A. Sec. 203 (n).

11 U.S.C.A. Sec. 203 (s). Par. (1).

Point (g). The petition in the Lowmon case was filed after the period of redemption had commenced to run and was not an authority in the case at Bar as to the 200 acre tract where the petition preceded the sale.

Lafayette, etc., vs. Lowmon, 79 F. (2d) 887.

It had no application to the case at Bar and the Circuit Court should have disregarded it and followed the decision of this Court in the (Va.) Wright case.

Point (h). The doctrine of the Lowmon case. This Court in the (Va.) Wright case in determining whether there was a conflict in the decisions and whether it had jurisdiction stated that the Circuit

Court of Appeals for the Fourth Circuit and Lafayette, etc., vs. Lowmon (7th Circuit) had held the Act of August 28, 1935, invalid while in the (5th Circuit) in Dallas, etc., vs. Davis it had been held valid and for that reason granted certiorari.

Wright vs. Mountain Trust Bank, 81 L. Ed. 736 (739).

The Appellee here contends that said Lowmon case was not before the Supreme Court. "Saying a thing is so does not make it so." This Court knew what the facts were in that case. Why was it mentioned and the report in which it is recorded stated, if it was not to bring it before this Court. It was the cause of the conflict and this Court could not remove that conflict without rejecting the doctrine of that case. It shows this Court did not recognize the distinction made in that case and considered that Congress intended to apply subsection (s) and extend the stay and period of redemption in all cases whether the petitions were filed before or after the sale of the land.

Point (i). This Court in the (Va.) Wright case stated that paragraph (2) of subsection (s) expressly stayed all judicial and official proceedings in the State Courts against the Appellant for three years and that it was constitutional. That was the intent of Congress and the means it deemed necessary to carry out its constitutional power over the subject of bankruptcies. "The intent of the lawgiver is the law." And that there should be no doubt about it this Court said in said Wright case: "The legisla-

tion is designed to aid victims of the general economic depression."

(Va.) Wright vs. Mountain Trust Bank
81 L. Ed. 736 (742-6).

It cannot be explained why the Circuit Court of Appeals overlooked that in the case at Bar the petition in bankruptcy as to the 200 acre tract was filed before the year of redemption commenced to run; that hence it was entirely different than the facts in the Lowmon case and hence the latter should not have been applied as to the 200 acres.

Although the facts as to the 200 acres were like the facts in the (Va.) Wright case and this Court had held that Congress had the power to extend the period of redemption by providing a stay of three years, yet the Court of Appeals ruled exactly the opposite from the decision of this Court, i.e. under the same facts this Court held Congress could extend the statutory period of redemption and the Circuit Court held that Congress could not. In other words this Court held the act was constitutional and the Circuit Court held it was unconstitutional. If there ever was a case of conflict between the decisions that action of the Circuit Court is one of them.

Point (j). The Circuit Court had no power to put limitations and distinguish the decisions of this Court. If this Court had intended to limit its decision to cases where the petition had been filed before the sale and to not apply the act to cases filed after the sale, it would have said so. It would not have left such a loop-hole or such an uncertainty to cause further conflict. It intended to remove the

cause of the conflict and could not have done that without rejecting the doctrine of the Lowmon case.

Point (k). The laws of Congress and the decisions of this Court on the subject of bankruptcies are supreme over the laws and decisions of the Courts of a State. This Court held in the Wright case that Congress under its broad power—"To establish . . . . uniform laws on the subject of Bankruptcies throughout the United States"—could go further than merely affecting the remedy. It could affect and impair the substantive rights of the mortgagee.

(Va.) Wright vs. Mountain Trust Bank, 81 L. Ed. 736 (747).
Fed. Constitution, Art. 1, Sec. (8), Clause 4.

There cannot be set up two different legislative bodies to legislative on the same subject at the same time. Endless conflict and confusion would result.

Point (l). It follows—"As the night the day" that the Circuit Court of Appeals erred in applying the Lowmon case to the case at Bar. That Appellant's assignments of errors—"That said Court (of Appeals) erred in holding that the debtor was not entitled to the benefits of the provisions of the amended subsection (s) of Section 75 of the Bankruptcy Act of August 28, 1935."

"That the Court erred in depriving the debtor of the benefits and relief granted in said amended subsection (s) of August 28, 1935"—were well taken. (R. 12).

The Appellee cannot deny but that the turning point in the decision of the lower Court was on the

validity of subsection (s). Over four pages of the opinion are devoted to the discussion of that question (R. 70-74).

In the recent decision of this Court in Indiana Ex. Rel vs. Brand (82 L. Ed. Adv. Opinions 447) it was held in substance that it "may examine the opinion below to ascertain what was decided."

Such an examination here will conclusively show that the Circuit Court held subsection (s) was unconstitutional and denied the appellant of the benefits thereof on the ground that Congress could not extend the period of redemption, or provide for a stay of three years so that he could rehabilitate, reorganize and refinance himself and save his Home. This Court holds that is the sole purpose of this Act.

(4). Argument proper of points.

As to the 80.31 acre tract (Some of the points relating to this tract have been stated as to the 200 acre tract. Hence some repetition will be unavoidable). It is certainly the duty of Counsel to the Court and his client to discuss the law as he understands it to be and if he thinks the Court has decided wrong to say so and point out wherein he deems it is wrong.

Point (a). Appellant contends that this Court in the (Va.) Wright case also decided the law as to 80.31 acre tract and in holding said subsection (s) constitutional intended to apply it to all cases in bankruptcy whether the original petitions were filed before or after the foreclosure sale and that if it had intended to limit the decision to only cases filed before the sale it would have said so. That such a construction would deprive a majority of the farmers of the benefits of this remedial act and thus defeat

the intent of Congress and the purposes for which the act was passed. A construction that it was intended to apply in both of said cases would create a harmonious whole in the law—a uniformity. Splitting it up as the Court of Appeals did here would destroy that harmony and uniformity and make it piece meal legislation.

Why argue the intent of Congress when the reports of the committee in the Senate and House have settled that question?

This Court said in its decision in the Wright case that it could consider these reports in arriving at the intent of Congress.

> Wright case, 81 L. Ed. 736 (744).
> And cited McLean vs. United States, 57 L. Ed. 260 and other decisions of this Court.

These reports settle beyond all controversy that Congress intended section 75 should apply to all cases whether the petition in bankruptcy was filed before the foreclosure sale or afterwards—during the year of redemption.

> 74 Congress, 1st Session.
> Senate Report No. 985 on S. Bill 3002, May 13, 1935. Same Session House Report No. 1808 on H. R. 8728, August 16, 1935.

The parts of these Reports on this point are set out in full in Appendix 1 and Appendix 2 and made a part of this brief.

Each Report states that the old subsection (n) of section 75 was amended to clarify the intent of Congress when it was enacted. This Amended subsec-

tion (n) is set out in 11 U.S.C.A. Sec. 203 (n), p. 978.

It provides: "(n) The filing of a petition .... praying for relief under this section (Sec. 75)— shall immediately subject the farmer and all of his property .... for all purposes of this section, to the exclusive jurisdiction of the Court, including all real or personal property or any equity or right in any such property, including, among others .... the right or equity of redemption where the period of redemption has not or had not expired .... or where the deed had not been delivered at the time of the filing of the petition." The next clause repeats the same thing as to the filing during the year. It is not disputed but that the foreclosure sale as to the 80.31 tract was on July 12, 1934, and the deed delivered August 2, 1935. (R. 68).

And that the petition in bankruptcy was filed during the year of redemption on October 29, 1934. (R. 8).

Thus Congress has adopted the equity of redemption provided by the States in this legislation. Congress declares that the debtor may file his petition: (a) At any time during the period—(one year in Indiana) (b) At any time before that period expires and (c) Or at any time before the deed is delivered. In the case at Bar, as to the 80.31 acre tract the petition was filed nine months before the period of redemption expired and over ten months before the deed was delivered. Hence, his petition was filed in time and Congress extended his year of redemption or stay for three years so that he could refinance his farm and save his Home. These reports also stated another important thing which must not be over-

looked in construing this remedial act, namely: "In legislating on this subject it is just as much the duty of Congress to consider the unfortunate debtor as to consider unfortunate creditors."

Senate Report p. 5.
House Report p. 6.

Congress was dealing with the basic industry of the Country. The men and women of America will decay and lose their spirit of independence, their love of Country and their ideals of themselves and their descendants if they lose their farms and homes.

The decision of this Court in the (Va.) Wright case was mentioned in the opinion in the case at Bar. The Circuit Court of Appeals was bound to know that this Court had laid down the rule in that case that where there is doubt it may look to the reports of the Congressional Committees, etc., to get the history of the bill and the intent of Congress.

Wright case 742.

There is not a word in the opinion showing it ever considered these public documents. It is as plain as the noon-day sun that had it considered these reports it could not have held this act unconstitutional and held that it did not apply in cases filed during the year of redemption. We will show a number of decisions holding that the petition can be filed during the year.

It follows this Court in deciding the Wright case knew of this amendment and knew the purpose of Congress to provide that insolvent farmers could file during the year of redemption and obtain the benefits of section 75 and its amendment with that

knowledge and with such an interpretation it held the act constitutional.

To say that Congress and this Court did not mean that the bankruptcy could file during the year is absurd. It thus appears that the lower Court in holding the act void disregarded the intention of Congress and the decision of this Court and others. Instead of following the intent of Congress and the decision of this Court, upholding it, the lower Court followed the erroneous doctrine in the Lowmon case —one of its own decisions and used the State law to restrict the powers of Congress in enacting subsection (s).

It is plain that the amendment of subsection (n) of section (75) at the time the new subsection (s) was added on August 28, 1935, was only declaratory of the meaning of section 75 from its passage. The Senate committee reported on this point:

"There is nothing new in subsection (n) except that it more clearly expresses the original intent of Congress, as to who shall be entitled to the benefits of section 75."

When Congress declared that the bankrupt could file his petition to obtain the benefits of section 75 and subsection (s) after the foreclosure sale, before the year of redemption expired and this Court approved that construction of the Section that settled the question. The lower Court was bound thereby and had no power to disregard the intent of Congress and the decision of this Court and declare something else to be the law. The Courts have no legislative power. That power is delegated to Congress.

The Courts have nothing to do with the wisdom or propriety of the law. Chief Justice Marshall said: "Let the end be legitimate, let it be within the scope of the constitution and all means which are appropriate, which are plainly adapted to that end which are not prohibited but consistent with the letter and spirit of the Constitution, are constitutional.

McCulloch vs. Maryland, 4 Wheat. 316, 421.

There is nothing in the Constitution or in the clause delegating the power to establish laws on the subject of bankruptcies which prohibits Congress from giving a bankrupt the right to relief if he files his petition while he is still the owner of the land and before he is divested of his title.

This is not all. The decision of the lower Court is untenable, is in conflict with the decision of this Court in the Wright case and the act of Congress, is unsound and illogical and defeats the plain purposes of Congress in enacting this remedial legislation by applying an alleged right under a State law to restrict and defeat the will of Congress.

It is absurd to contend that Congress and this Court would have devoted so much time and careful consideration to this subject and only intended to apply it to the minority of cases.

Courts and other students of this remedial legislation, are driven to the conclusion that Congress and this Court were passing and construing this act to apply generally to all cases rather than to only part of them. That it was a harmonious and complete law. If Congress had intended this as piece meal legislation it would have said so. It is un-

reasonable to contend that Congress would have spent its valuable time in enacting such imperfect legislation.

The statement of such a proposition carries its own refutation. This Court said that this act of August 28, 1935, was passed "to aid victims of the general economic depression."

Wright case 746.

Congress knew that farmers who happened to file their petitions after the foreclosure sale were just as much in need of this remedial legislation as those who filed before. It considered both in the same class. It never intended to make such a distinction as the lower Court made in the case at Bar. It never intended to give relief to those who filed before and deny it to those who filed afterwards. It never intended such fragmentary, piece by piece, little by little legislation.

Courts should avoid a construction of the Acts of Congress which would lead to an absurdity.

This Court was aware of the technical and strained construction which the Circuit Court had placed upon this remedial Act in said Lowmon case and if it had intended to approve it, it would have said so. It would not have held the act valid and at the same time intended to limit it to less than half of the pending cases and deny it to all others.

The Appellee's position forces it to contend that this Court intended to approve the doctrine in the Lowmon case. It never intended that. It intended to remove the conflict. To have approved the Lowmon case would have defeated that intention. It would have been inconsistent with its purpose to bring

about uniformity in the decisions to have allowed the cause of the conflict to stand.

It intended to remove every root and branch of the cause of the conflict. The Lowmon case held this Act void and when this Court held it valid it thereby rejected the doctrine of that case and overruled it. "The axe is laid unto the root of the trees."

The lower Court in order to appear to be consistent stated that the Lowmon case was not before the Supreme Court in the (Va.) Wright case.

That made its position worse. The Lowmon case was before this Court in the Wright case. "Before" must be used in the sense of "considered." Did it consider that case and the doctrine it announced? To establish jurisdiction conflict in the decisions had to be first shown. At the beginning of the opinion this Court stated, among other things, that the Lowmon and other cases had held subsection (s) void and that in the Fifth Circuit in Dallas Joint Stock, etc., vs. Davis, the act had been held valid and that on account of this conflict and the importance of the question certiorari was granted. This Court had read the Lowmon case and learned that the petition in that case had been filed during the year of redemption. It also knew that in the case it was about to decide the petition had been filed before the sale. It also knew that the Circuit Court had held that the act was void because the petition was filed after the foreclosure sale and also held that Congress had no power to extend the period of redemption in such a case. This Court also knew that Congress had declared in amending subsection (n) of section 75 that it was the intent of Congress from

the beginning to extend the period of redemption to such cases as the Lowmon case, and the 80.31 acre tract here. This Court with this knowledge of all of the above facts and questions of law held that Congress did have the power to extend the period and it did not limit its decision to only cases filed before the sale and did not say that it did not apply to cases filed after the sale. The doctrine of the Lowmon case was before and considered by this Court. This Court desired to remove the conflict and it could not have done so without removing the cause—the Lowmon case. In holding the new act was valid it rejected the doctrine of the Lowmon case and the case at Bar. This Court never intended to leave that case stand. To leave it stand would have continued the conflict and defeated the purpose of this Court to bring about uniformity.

It has been claimed that the Lowmon case was only used as a basis for certiorari. That does not help the matter. "Basis" means foundation. If it was used as the foundation of the conflict, then it was considered as one of the causes of that conflict and that brought it before this Court. It is unreasonable to contend that this Court set out the Lowmon case in its opinion and gave the Report in which it was reported and stated it was the cause of the conflict and then to say it was not before the Court. This Court intended to disapprove of the decision in that case and it never intended to approve of the doctrine therein and leave it stand to cause further conflict.

Such a ruling instead of removing the conflict would continue it. Again the Circuit Court in the case at Bar held that he could not file during the

period of redemption and that Congress had no power to extend it.

Hence, said decision is untenable and in conflict with the Act of Congress. Which shall prevail the Act of Congress or the decision of the Court of Appeals? The latter must yield when Congress in the exercise of its power over the subject of bankruptcies declared that the debtor had the right to file during the year of redemption and also declared that it had extended that period to carry out the purposes of the act. That because the Supreme law of the land and the Circuit Court was bound thereby and it could not use any State law to overthrow this Act of Congress. This Court in the (Va.) Wright case held that Congress in the exercise of its power on this subject could go further than affect the mere remedy; that it could affect its substantive rights of the creditor, i.e. It may marshall the liens, order the property sold freed of liens and transfer the latter to the proceeds, injoin the sale of collateral as in the Rock Island case and may injoin the mortgagee from action which would defeat the purposes of subsection (s) to effect rehabilitation of the farmer.

(Va.) Wright case 747-48.

There is no ground nor theory upon which the decision of the Court of Appeals can stand. It is in the teeth of the intention of Congress and the decision of this Court.

Point (b). Under the law of Indiana the mortgagor is entitled to the possession and rents and profits from the land for one year from the date of the sale.

Neff vs. Hagaman, 78 Ind. 57 (62).
Robertson vs. VanCleave, 129 Ind. 217 (225).
Burns Ind. Statute, 1926, Sec. 831.
Rev. Statutes, 1933, Sec. 2-3919.

Point (c). Under that law the year of redemption is not bid on or sold at the foreclosure sale and the mortgagee who bids it off has no legal or equitable right to the possession or rents and profits during the year and public policy forbids the debtor from waiving this right. We cite four of the very recent decisions of the Supreme Court of Indiana in support of the above propositions:

Federal Land Bank vs. Schlecter, 208 Ind. 9 (193 N. E. 378).
Plattner vs. Mutual Benefit Life, 199 N. E. 600.
Knapp vs. National Building & Loan, 7 N. E. (2d) 938.
D. Angelo vs. Hanson, 8 N.E. (2d) 587.

Thus it is seen that the debtor's right or equity of redemption is carefully guarded by the statutes and decisions of the Courts of Indiana. Its Supreme Court speaks of it as a humane and reasonable regulation allowed so that the debtor may retrieve his fortune, if possible.

Davis vs. Rupe, 114 Ind. 588.
Sellers vs. Stoffell, 139 Ind. 468-473.

There is no law in Indiana or decisions—(nor never has been)—which conflicts with the intention of Congress to allow the debtor to file his petition during the year of redemption and to extend that

period—"which was to protect the farmer's property and Home." (Senate Report, p. 2).

Point (d). The Bankruptcy Act is a remedial measure intended to enable farmers to retain their farms and Homes and it was the duty of the Court of Appeals to turn away from a technical construction and give it a liberal and broad construction to carry out the purposes of Congress which intended to save farm Homes—not to confiscate them. "Men may construe things . . . . clean from the meaning of the things themselves." "The latter killeth but the spirit giveth life." The true rule of construction of the Constitution (and likewise Acts of Congress) is given by this Court in Home vs. Blaisdell, 78 L. Ed. 413. You need not look further.

Point (e). The right to redeem is property under the Indiana law and decisions.

Burns Stat., 1926, Sec. 795.
Julian vs. Beal, 26 Ind. 220 (222).

"It must be conceded that the right of redemption is a property right."

In re—Argyle Lake Short, etc., 78 Fed. (2d) 491.

Point (f) has already been discussed.

Point (g). Under this point we contend that the debtor filed his petition while he was in possession of the land and during the year of possession. Congress declares that was in time and this Court held the same. This gave the Bankruptcy Court exclusive jurisdiction over the debtor and the land herein and this Court held in the (Va.) Wright case that Congress had the power to extend the period of redemption. We cite the following cases which hold

that the petition may be filed during the period of redemption.

In re—Cope, 8 Fed. Supp. 961.
In re—Nelson, Fed. Supp. 557.
U. S. Bank vs. Pamp, 83 Fed. (2d) 493.
In re—Bradford, 77 Fed. (2d) 992.
In re—Duffey, 9 Fed. Supp. 166.
In re—Klein, 9 Fed. Supp. 57.

Points (h) to point (o) have already been discussed.

Point (p) (q). Thousands of farmers have abandoned or lost their farms caused by the confusion and uncertainty which resulted from the decisions in the Lowmon and the case at Bar. When this Court decided the Wright case they took new hope, but these two decisions threw everything out of gear again.

They thought they had a whole law, but those decisions cut it down to a half law. The Circuit Court should have paid attention to the rule laid down by this Court in the Wright case, namely:

"When the validity of an Act of Congress is drawn in question and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." Citing Crowell vs. Benson, 285 U.S. 22-62-76 L. Ed. 598-619.

If the Court of Appeals had considered that the Reports of the Committees who framed this act had stated it applied to cases like the Lowmon and the case at Bar, it could have construed it as a valid law. There is nothing in the opinion to show it considered

this rule. All it seems to have considered was its own erroneous decision in the Lowmon case. What is the use of Congress passing laws within its scope if no attention is to be paid to them by the Courts.

The Circuit Court based its opinion in the case at Bar entirely on its own decision—the Lowmon case. It really cited only one case in support of its action in holding that the debtor could not file during the period of redemption as Congress enacted and that the latter could not extend that period. That is the case of Chicago Board of Trade vs. Johnson, 264 U.S. 1 (68 L. Ed. 533). That case is not in point at all. It did not involve the question presented here. It was a case as to whether the right in the ownership of a seat on the Board of Trade was property in bankruptcy. The Court held that it was. That was all that was decided. It could not have decided the question here because it was not before the Court. An examination of all of the quotation will show that the authority is squarely against the Court's position in the case at Bar. The Court quoted thus: "Where the bankrupt law deals with property rights which are regulated by the State law, the Federal Courts in bankruptcy will follow the State Courts." And it stopped there. What was the rest of the clause?, "but when the language of Congress indicates a policy requiring a broader construction of the statute than the State decisions would give it, Federal Courts cannot be concluded by them." And cites 243 Fed. 332.

In the case at Bar the Court held that under the State statute the debtor could not file during the year of redemption. But it is plain that the Federal

law is broader than that and the Court there held that the Federal and not the State law controlled. We are contending here that the Federal law wipes away all alleged rights under State laws.

It also cited the Blaisdell (Minnesota) case, 290 U.S. 398. That case does not help the Court but is in favor of our position here. This Court held in that case that an extension of the period of redemption under a State law was valid. This Court in the Wright case cited the Blaisdell case, showing the State had the power but pointed out that Congress had greater power than the State under its broad constitutional power over the subject of bankruptcies. Hence, in the instant case there is no citation of any authority which supports the Courts strange position. The only citation left is the Lowmon case. When we turn back to it we find it cited in support of the ruling the following: Chicago Board of Trade vs. Johnson. We have shown above it does not apply at all. On the other hand when the whole statement of the Court is given it favors our position. Then it cites Hubble vs. Berry, 180 Ind. 513. All that case decides is that after year expires its purchaser has an equitable interest. That is true, but it has nothing to do with the question here.

Then it cites:

In re—Goldman, 102 Fed. 122, a case decided in 1900 under the old bankruptcy law long before section 75 was enacted. It could not be an authority under the new act of March 3, 1933, and its amendments.

American Mine, etc., vs. Illinois Coal Corporation, 31 Fed. (2d) 507. Then Trustee received and held

property and Court ordered it sold to wind up corporation—sale without right of redemption. Court found there had been no mortgage foreclosed. Hence, no redemption. The case was decided right but does not involve the question presented here at all. The question here was not before that Court at all and it could not have decided it.

The other case is Matter of Sorensen, 77 Fed. (2d) 166. It is not a case under section 75, but under section 74 (m). It relates to what property is embraced in the petition. In subsection (a) it is provided that it should not include any proceedings in any Court in which a final decree had been entered. All that the Court decided in that case was that there had been a "final decree" (of foreclosure) and hence the property did not go to the trustee. The case was decided right but it does not apply here at all and the question here was not presented and the Court could not have decided it.

The result is that neither of the cases cited in the Lowmon case sustain the decision of the Court. Hence, the Lowmon case falls. Neither of the cases other than Lowmon case cited in the case at Bar have a thing to do with the question presented in the latter. Hence, when the Lowmon case fell the ruling in the instant cases went down with it. Nothing was left to support either case. We ask the Court to examine the above cases.

Citing cases do not make it so. They must be analogous. The same identical question must have been presented in the case cited or before the Court. If the same question is not presented the Court could not have decided it. And the language used by the

Court must have been necessary to decide the case.

Enough has been said. Grant it is the duty of the Federal Courts to defend the Constitution when Congress transcends its powers and hold such acts void, yet on the other hand, it is their solemn duty to give to the Constitution and the Acts of Congress enacted under it, a liberal construction and give to the people who made it and have preserved it, all of the rights expressly or impliedly granted to them therein.

Wherefore the Appellant prays the Court to review and reverse and set aside the order and judgment of the Honorable Circuit Court of Appeals for the Seventh Circuit as to both of said tracts of land and to direct said Court to reverse the decisions of said District Court.

Respectfully submitted,

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Counsel for Appellant.

APPENDIX 1.

Calendar No. 1031

SENATE.

74th Congress
1st Session

Report
No. 985

TO AMEND THE BANKRUPTCY ACT.

May 13 (calendar day, July 1), 1935—Ordered to be printed.

Mr. McCarran, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany S. 3002]

The Committee on the Judiciary, to whom was referred the bill (S. 3002) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, after consideration thereof, report the bill favorably with amendments with the recommendation that it be passed.

Before we discuss S. 3002, as amended by the committee, we wish to bring to the attention of the Senate the fact that section 75 of the Bankruptcy

Act has not been held unconstitutional by the Supreme Court, save and except subsection (s).

This bill has for its object the clarification of section 75, and the rewriting of subsection (s), which has been held unconstitutional, so as to conform to the decision of the Supreme Court. We shall first discuss the amendments to section 75, other than subsection (s).

These amendments have become necessary because of the great confusion caused by the diverse rulings of the various United States district courts, in the construction of section 75. Some courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition, although under the law of the State, he was in possession and full control of the property, and could redeem it within the period allowed.....

.....

Obviously, these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's property and home. Other courts have just held the opposite, and have given full protection, and carried out the intent of Congress. There should be uniformity. The amendment to subsection (n) remedies this situation. .....

The amended subsection (n) in fact construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now enacted, it becomes clear that it was the intention of Congress, when it passed section 75, that the

debtor farmer and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale, and during the period of redemption; and that no proceedings after the filing of the petition should be instituted, or, if instituted prior to the filing of the petition, should not be maintained in any court, or otherwise. Yet there have been a multiplicity of different holdings and conclusions reached by different courts on this subject. The amended subsection (n) clarifies, construes, and interprets the intent of Congress, so as to bring about uniform decisions and rulings by the courts in the future.....

The only farmer who can take advantage of this act must be a bankrupt. A bankrupt is a financial wreck. The question of interest and profits in bankruptcy proceedings is never considered. The question is one of salvaging, and saving what can be saved out of the wreck. In legislating on this subject it is just as much the duty of Congress to consider the unfortunate debtor as to consider the unfortunate creditors.

APPENDIX 2.

HOUSE OF REPRESENTATIVES.

74th Congress
1st Session

Report
No. 1808

TO AMEND THE BANKRUPTCY ACT (AGRICULTURAL COMPOSITIONS)

August 16, 1935—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. Lloyd, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 8728]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8728) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto, after consideration, report the same favorably with amendments with the recommendation that the bill as amended do pass.....

At the very outset, before we discuss H. R. 8728, as amended by the committee, we wish to bring to the attention of the House the fact that all of section

75 of the Bankruptcy Act has not been held unconstitutional by the Supreme Court. All that the Supreme Court held unconstitutional was subsection (s) of section 75.

This bill has for its object and purpose, first, the clarification of section 75, and the addition of a new subsection (s), in place of the subsection (s) held unconstitutional. The new subsection (s) in this bill has been written so as to conform to the decision of the Supreme Court. The Judiciary Committee has considered same, and feels that it meets with the requirements of that decision.....

We shall first, however, discuss the amendments to section 75, other than the new subsection (s). These other amendments are largely clarification, and have become necessary because of the diverse rulings and holdings of the various United States district courts in the construction of section 75. Some of these courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition, although under the law of his State he was in possession, entitled to rents and profits, and in full control of the property, and could redeem it within the period allowed.

Again, other courts have held that the farmer could not take advantage of the act during the period of a moratorium established by a State, while others have held that the debtor could not take advantage of the act after sale, but prior to confirmation, although in all of these cases if the debtor had

the money, and were in a position to pay, he could redeem, and save the property.

It is clear that these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's home and property, and at the same time to protect the creditor. On the other hand, other courts have held just the opposite, and have given full protection, and carried out the intent of Congress. Under this condition, we think it is admitted by all that there should be uniformity.....

The amendment to subsection (n) in fact construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now amended in this bill, it becomes clear that it was the intention of Congress, when it passed section 75, that the farm debtor and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer, prior to confirmation of sale, during the period of redemption, and during a moratorium; and that no proceedings after the filing of the petition should be instituted, or if instituted prior to the filing of the petition, should not be maintained in any court, or otherwise. Yet, as we have seen, there have been a multiplicity of different holdings and conclusions reached by different district courts on this subject. The amended subsection (n) clarifies, construes, and interprets the intent of Congress, so as to bring about uniform decisions and rulings by the courts in the future. There is nothing new in subsection (n) except that it more clearly ex-

presses the original intent of Congress, as to who shall be entitled to the benefits of section 75.....

We must not lose sight of the fact that the only farmer who can take advantage of this act must be a bankrupt. A bankrupt is a financial wreck. The question of interest and profits is not considered in bankruptcy proceedings. The question is one of salvaging and saving what can be saved out of the wreck, without further wrecking the individuals involved. In legislating on this subject, it is just as much the duty of Congress to consider the unfortunate debtor as to consider the unfortunate creditors. It is for Congress, in its discretion, to decide how this shall be done.

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